Document 1

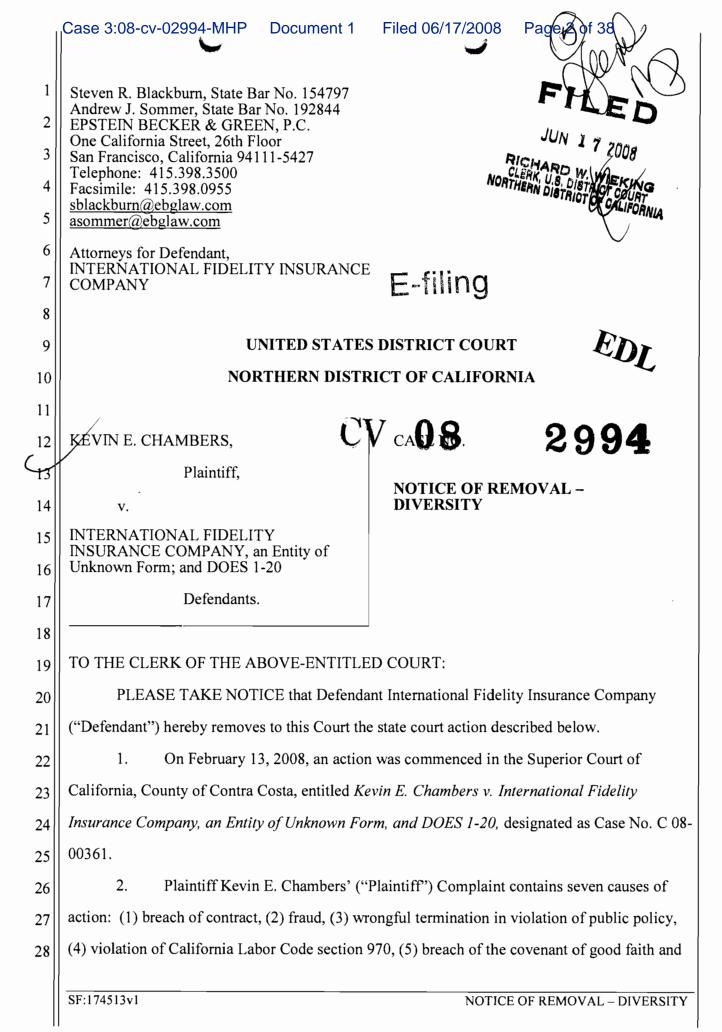
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JS 44 - CAND (Rev. 11/04)

# **CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use

I. (a) PLAINTIFFS	ose of initiating the civil docket s	heet. (SEE INS	DEFENDANTS	WO)	
Kevin E. Chambers			International Fideli	ity Insurance Com	pany
		E	-filing $\mathbf{E}$	DL	ADR
	RST LISTED PLAINTIFF <u>Contra C</u> S. PLAINTIFF CASES)		COUNTY OF RESIDENCE OF FI	RST LISTED DEFENDANT <u>1</u> PLAINTIFF CASES ONI IATION CASES, USE THE L	•
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Charles R. Gossage 31441 Santa Margarita Parkway, Suite A260 Rancho Santa Margarita, CA 92688 Tel: 949.709.0006  ATTORNEYS (IF KNOWN) Steven R. Blackburn (SBN 154797) Andrew J. Sommer, Esq. (SBN 192844) EPSTEIN BECKER & GREEN, P.C. 1 California St., Ste. 2600, San Francisco, CA 94111 Tel: 415-398-3500					
II. BASIS OF JURISDICT	ION (PLACE AN 'X' IN ONE BOX ONL'	y) III. CITI	ZENSHIP OF PRINC		ACE AN 'X' IN ONE BOX FOR
1 U.S. Government Plaintiff					
	oved from Remanded from Appellate Court	Rein	I ONE BOX ONLY) stated or Transferred pened Another distr (specify)		Appeal to District Judge from Magistrate Judgment
V. NATURE OF SUIT (	PLACE AN "X" IN ONE BOX ON	LY)	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
different states and the a	310 Airplane	ity) 28 U. sceeds the s	630 Liquor Laws 640 RR & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other  LABOR 710 Fair Labor Standards Act 720 Labor/Mgmt Relations 730 Labor/Mgmt Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act CH YOU ARE FILING AND S. C. Section 1441(a	). This is an action usive of interest a	410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer influenced and Corrupt Organizations 810 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes 890 Other Statutory Actions  EMENT OF CAUSE. between citizens of access of the costs.
COMPLAINT:	UNDER F.R.C.P. 23  F ANY PLEASE REFER TO	CIVIL I R 3-1	CONCERNING	JURY DEMAND	
VIII. RELATED CASE(S) IF ANY PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".  IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)  X SAN FRANCISCO/OAKLAND SAN JOSE					
DATE	SIGNATURE,C	F ATTORNEY		/	
June 17, 2008	Mil				NDC-JS44



- fair dealing, (6) negligent misrepresentation, (7) age discrimination in violation of the California Fair Employment and Housing Act, California Government Code section 12940; (8) defamation, and (9) intentional infliction of emotional distress. Defendant received a copy of the Summons and Complaint on May 21, 2008. A true and correct copy of the Summons, Complaint, and all papers delivered therewith to Defendant, are attached as **Exhibit A**. On June 16, 2008, Defendant filed an Answer to the Complaint in the Superior Court of Contra Costa County. A true and correct copy of that Answer is attached hereto as **Exhibit B**. Defendant is informed and believes, and thereon alleges, that other than the pleadings attached to this Notice of Removal, there have been no further pleadings, process, or orders filed in this action.
- 3. Defendant is informed and believes that Plaintiff is now, and was at the time this lawsuit was filed, a citizen of the State of California, residing in Contra Costa County.

  Defendant is now, and was at the time this lawsuit was filed, a New Jersey corporation, with its principal place of business in New Jersey.
- 4. <u>Jurisdiction</u>: This is a civil action over which this Court has original jurisdiction under 28 U.S.C. section 1332, and is one which may be removed to this Court by Defendant, pursuant to provisions of 28 U.S.C. section 1441(a), because this is an action between citizens of different states and the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.
- 5. <u>Intradistrict Assignment:</u> Venue lies in the United States District Court for the Northern District of California, pursuant to 28 U.S.C. sections 1391(a) and 1441(a), because the state court action was filed in this District and this is the judicial district in which the action arose. Pursuant to Local Rule 3-2(d), intradistrict venue properly lies in the San Francisco Division because Plaintiff's state court complaint was filed in the Superior Court of Contra Costa County.

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	Case 3:08-cv-02994-MHP	Document 1	Filed 06/17/2008	Page 4 of 38
1	WHEREFORE Defen	dant prays that th	ne above-referenced action	on be removed from the
2	Superior Court of Contra Cos	ta County to this	Court.	
3	DATED: June 17, 2008		EPSTEIN BECKER &	GREEN, P.C.
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5			By: Steven R. Blackby	ırn
6			Andrew J. Somme	er
7			Attorneys for Defendar INTERNATIONAL FI INSURANCE COMPA	DELITY ANY
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# CLAIM

#### SUMMONS (CITACION JUDICIAL)

MAY 2 1 2008

received

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

International Fidelity Insurance Company, an Entity of Unknown Form;

YOU ARE BEING SUED BY PLAINTIFF: (LO ESTÁ DEMANDANDO EL DEMANDANTE): Kevin E. Chambers, an Individual

You have 30 CALENDAR DAYS after this summons and logal papers are served on you to file a written response at this count and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the count to hear your case. There may be a count form that you can use for your response. You can find these count forms and more information at the California Courts Online Sulf-Help Center (www.counfinfo.ca.gov/selfhelp), your county law library, or the counthouse nearest you. If you cannot pay the filing fee, ask the court clark for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other logal regularments. You may want to call an attorney right eway. If you do not know an attorney, you may went to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelposilifornis.org), the California Courts Quiline Self-Help Center (www.courtinfo.os\_gov/selfibelp), or by contacting your focal court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que la entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una caria o una llamada telefónica no lo protegen. Su respuesta por escrito úene que estar en formato legal correcte al desea que procesen su caso en la corte. Es posible que haya un formulario que ustad pueda usar para su respuesta. Pueda encontrer entos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfnelp/espanoi/), en la biblioteca de leyes de su condedo o en la corte que le quede más corca. Si no presenta puede pagar la cuota de presentación, pida al secretario de la corte que le de un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su ayeldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llama a un abogado inmediatamente. Si no conoce a un abogado, puede ilamar a un abogado, es posible que cumpla con los requisitos para obtanar servicios es asimisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtanar servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en al sido web de California Legal Services, (www.lawhelposiflomia.org), en el Cantro de Ayuda de las Cortas de California. (www.lawhelposiflomia.org), en el Cantro de Ayuda de las Cortas de California. (www.lawhelposiflomia.org), en el Cantro de Ayuda de las Cortas de California. (www.lawhelposiflomia.org), en el Cantro de Ayuda de las Cortas de California.

he name and address of the court is: El nombre y dirección de le corte es): Superior Court of the State of Califi	omie Contra Corta Correta	CASE NAMEER 08 - 00 E	361
640 Yensein Valley Road, Walnut 725 East 51 Martinez A	Creek, California 94596		
El nombre, le dirección y el número de telé: Charles R. Gossage, Esquire		nandante que no tiene ebogado, e 9.7838 (Facsimile)	98):
PATE: FEB. 1 3 2008 Fechal	ite A260, Rancho Santa Margarita, C Clark, by	alifornia 92688 D. WEBER	Deputy (Adjunto)
Para prueba de entrega de esta citatión us NOTICE TO BEALL 1 as	Proof of Service of Summons (form POS-010) e el formulario Proof of Service of Summons. O THE PERSON SERVED: You are served a an individual defendant. s the person sued under the ficultious name of	(POS-010)).	
3. X 0	n behalf of (specify): [NTERPATION ALL		ice campa
under:	CCP 416.20 (defunct corporation) CCP 416.40 (association or partners) other (specify):	CCP 416.60 (minor) CCP 416.70 (conserva	•
4, b	y personal delivery on (date):		Page 1 of 1

Form Adopted for Managatory 1160-Judiced Counted of Controlled HAND DELIVERED SUMMONS SUM-1001 Form January 1 2004 HAND DELIVERED Code of Cod Procedure 56 4 12 20, 465

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CHARLES R. GOSSAGE, CA BAR NO. 166260 1 31441 Santa Margarita Parkway, Suite A260 FEB 13 2nna Rancho Santa Margarita, California 92688 2 949.709.0006 (Telephone) 949.709.7838 (Facsimile 3 Attorneys for Plaintiff 4 5 SUPERIOR COURT OF THE STATE OF CALIFORNIA 6 COUNTY OF CONTRA COSTA 7 8 Case No. [ 108 = 00361 KEVIN E. CHAMBERS, an Individual, 9 COMPLAINT FOR: Plaintiff. 10 1) Breach of Contract ۷s. 2) Fraud 1] INTERNATIONAL FIDELITY 3) Wrongful Termination INSURANCE COMPANY, an Entity of 12 4) ' Violation of Labor Code 970 Unknown Form; and DOES 1-20 Breach of Covenant of Good Faith 5) 13 & Fair Dealing Negligent Misrepresentation 6) 14 7) Age Discrimination Defamation 15 8) 9-10) Intentional and Negligent Infliction 16 of Emotion Distress 17 PER LOCAL RULE 5 THIS CASE IS ASSIGNED TO 18 19 Plaintiff Kevin E. Chambers (hereinafter referred to as "Plaintiff"), hereby complains and 20 alleges as follows: 21 PARTIES, VENUE AND JURISDICTION 22 1. Plaintiff is, and at all times mentioned herein was, an individual residing in 23 Clayton, California, County of Contra Costa. Plaintiff is a recognized leader in the surety 24 insurance industry with substantial experience and successes in developing contract surety 25 business throughout the Western United States and, in particular, throughout California as a surety 26 insurance underwriter. 27 28

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- 2. Plaintiff is informed and believes and thereupon alleges that Defendant International Fidelity Insurance Company (hereinafter referred to as "IFIC") is, and at all times mentioned herein was, an entity of unknown form and that was authorized to do and doing business as an insurance company and surety insurer, selling and transacting insurance on behalf of the general public, and engaging in other insurance related businesses in the State of California, among other locations.
- 3. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants herein named as DOES 1 through 20 (hereinafter referred to as "DOE Defendants"), inclusive, are unknown to Plaintiff, who therefore sues said DOE Defendants by such fictitious names, and Plaintiff will ask leave of court to amend this pleading to show their true names and capacities when same has been ascertained.
- 4. Plaintiff is informed and believes and upon such information and believe alleges that at all times herein mentioned, Defendants, and each of them, aided, abetted, and conspired with each other to damage and injure Plaintiff and its business as hereinafter alleged. Plaintiff further alleges that Defendants, and each of them, were, and are, in some manner responsible to Plaintiff under the obligations and allegations stated herein, that each such Defendant was and is the agent and/or representative of the remaining Defendants, and that each Defendant in doing the things alleged herein, acted and continues to act with the knowledge and consent of the remaining defendants.
- Collectively, IFIC and the DOE Defendants are hercinafter referred to as the "Defendants".
- 6. Jurisdiction and venue are proper in this Court because Plaintiff managed and worked in IFIC's Branch Office in Walnut Creek, California, and because many of the misrepresentations and breaches occurred in Walnut Creek and/or Clayton, both of which are in the County of Contra Costa,
- 7. Jurisdiction is further proper in this court over each Defendant because, on information and belief, Defendants are either residents of this jurisdiction, transactes or transacted

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Case 3:08-cv-02994-MHP

business in this jurisdiction, and/or contracted for business in which Plaintiff was involved in securing the business, and Defendants wrongfully terminated Plaintiff in County of Contra Costa.

Venue is proper in the Superior Court because this is an action of general and unlimited jurisdiction, is not a small claims or limited jurisdiction case and the amount in controversy exceeds \$75,000.

#### SUMMARY OF FACTS AND CLAIMS COMMON TO ALL CAUSES OF ACTION

- 9. This case is about Defendants' abuse of Plaintiff's trust and confidence by fraudulent and/or negligent misrepresentations and omissions which induced Plaintiff leave his employer XL Surety and to embark on a mission to almost single handedly grow and develop Defendants' most profitable Branch Office based upon Defendants' promise and representation of a long term career with Defendants that would result in substantial increases in salary, significant performance bonuses, and tremendous autonomy in the growth of what would soon be Defendants' most successful Branch Office.
- 10. Prior to taking a position with Defendants and opening Defendants Branch Underwriting Office in Northern California, Plaintiff was a recognized leader in the contract surety insurance business with more than fifteen (15) years of experience. Directly prior to being pursued and persuaded to join Defendants' swrety insurance operation and opening the Branch Office for Defendants, Plaintiff was the Regional Manager in charge of XL Surety's contract surety underwriting operations, and was single handedly responsible for the management, growth, and ultimate profitability of XL Surety's contract surety business.
- In or about February 2001, Defendants approached Plaintiff's successful XL Surety office and underwriting operation and began courting Plaintiff to join Defendants and expand Defendants' contract surety business by opening Defendants' first branch office in California to serve the Western United States. Defendants, by and through its executive officers and authorized representatives, made representations to Plaintiff during the month of February 2001 that by transferring Plaintiff's business to Defendants and opening Defendants' West Coast Branch

.  Office, Plaintiff would have guaranteed long term employment with Defendants that would translate into significant annual monetary increases, large performance based bonuses, a leased company vehicle with all expenses paid, and an expense account consistent with that of the highest level of executives within Defendants' organization. Indeed, in an effort to lure Plaintiff to join Defendants and grow what was a non-existent West Coast contract surety operation for Defendants, Defendants promised and paid Plaintiff a \$50,000 signing bonus.

- Based upon Defendants material promises of long-term employment, significant compensation, management autonomy, and the opportunity to open, manage, and run Defendants' West Coast Operations, Plaintiff resigned his Regional Manager position at XL Surety and joined Defendants on or about April 18, 2001. Indeed, on that date, Plaintiff arrived at the Walnut Creek Chrysler Jeep Dealership, was handed the keys to his new Chrysler Concorde, and immediately proceeded to drive to Los Angeles, California to begin meeting with Plaintiff's largest surety broker accounts to begin building Defendants' West Coast Operation.
- 13. From the moment Plaintiff joined Defendants' organization, Defendants knew that their recruiting efforts had paid off Plaintiff was literally working "24/7", traveling throughout the Western United States to develop and secure contract surety and other business, and single handedly managing and leading the growth of Defendants' first West Coast Branch Office that would soon become Defendants' most profitable underwriting operation center.
- 14. In his efforts to grow Defendants' West Coast contract surety business and as part of his unparalleled and unmatched work ethic, Plaintiff was literally working off the floor of an empty office with only a telephone and a card table Plaintiff used to conduct business until the office Plaintiff located and leased was fully furnished. Yet, by June 2001, Plaintiff had single handedly booked approximately \$225,000 in surety premium more than most of Defendants' existing, fully staffed, and operating offices.
- 15. By July of 2001, Plaintiff had fully transitioned his \$3 million book of business from XL Surety and did so only with the assistance of his Executive Assistant, Elisa DeCristo. In

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September 2001, Ms. DeCristo went on maternity leave and Plaintiff was left to run a multimillion dollar contract surety underwriting operation for Defendants with only the assistance of a temporary employee.

- By the end of December 2001, through Plaintiff's energy, efforts, and "sweat 16. equity", Plaintiff had grown Defendants' California Branch Office to more than five (5) employees and finished the year with approximately \$1,600,000 in booked contract surety premium - with no losses. Defendants applauded Plaintiff's unprecedented accomplishments, and enjoyed the remarkable profits Plaintiff had generated for Defendants in less then eight (8) months.
- 17. Defendants could not contain their enthusiasm for what Plaintiff had accomplished and documented as much in Plaintiff's first Performance Evaluation & Assessment by rating Plaintiff as "very superior" and "exceptional." Defendants stated that Plaintiff has met and exceeded all of his 2001 target goals, and further applauded Plaintiff for, in Defendants' words, doing a "fine job in opening [Defendants] branch in California, bringing over agent and account relationships and getting things up and running. This has required personal sacrifices at times and long hours. A pretty amazing year for Kevin, all things considered."
- 18. Plaintiff's success continued into 2002 and, through this exhaustive efforts, Plaintiff closed the year in 2002 with \$6,600,000 in booked contract surety premium and an incredibly profitable year that, again, benefited Defendants and significantly contributed to Defendants' bottom line.
- 19. Defendants were overwhelmingly pleased with Plaintiff's success - in less than 20 months, Plaintiff had opened and developed an office that was a significant "money maker" for Defendants and Plaintiff had wildly exceeded Defendants' expectations. This was again documented in Plaintiff's 2002 Performance Evaluation & Assessment with any overall rating of "very superior." Defendants stated that Plaintiff had "met all goals while assisting a commercial surety operation in getting of the ground . . . All in all, [Plaintiff] exhibited considerable managerial skills and business acumen . . . . "

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- 20. To ensure that Plaintiff was a fixture of Defendant's organization, Defendants committed to Plaintiff that as long as he was generating contract surety business with Defendants he "had a job for life" and would continue to climb Defendants' ladder of compensation, success, and responsibility. Defendants continually represented throughout the entirety of Plaintiff's "employment" with Defendants that he was an integral member of Defendants' team and, specifically, "indispensable."
- 21. Plaintiff continued his screaming success for Defendants with a banner year in 2003 and \$10,700,000 in booked contract surety premium - \$3,200,000 more than what Defendants had targeted as Plaintiff's Branch Office's goal, 'Plaintiff's extraordinary efforts - which were unmatched across the organization - were awarded with an "exceptional" 2003 Performance Evaluation & Assessment and the Defendants' statement that Plaintiff "has had a very good year in terms of having the office come together from a staffing and production standpoint. In fact, the volume of written premium has been a little short of amazing."
- In 2004, less than 2 ½ years with Defendants, Plaintiff had grown the office almost ten-fold to \$14,000,000 in booked contract surety premium. Plaintiff's efforts were again rewarded with an outstanding review, and with a statement that most commercial underwriters can only wish for -- "the management challenge continues to be underwriting this dynamic book with an economical staff and communicating with senior members at IPIC in Newark." Bottom line -Defendants were having trouble keeping up with Plaintiff's energy, work ethics, and success.
- 23. By 2004, Plaintiff was in managing the most successful Branch Office in Defendants' organization. Indeed, Plaintiff's Branch Office exceeded the next closest Branch Office by \$6,000,000 and was, without a doubt, an incredibly profitable division of Defendants' organization.
- 24. In 2005, Plaintiff set another underwriting premium record for Defendants' entire organization - \$15,800,000 with a loss ratio of only 10%. No other Branch Office came even closc.
- 25. Throughout their almost five (5) year year relationship, Defendants forged a very close professional and personal relationship with Plaintiff, and became intimately familiar with

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Plaintiff's day to day operations in an effort to replicate Plaintiff's successes throughout the United States. Notably, Plaintiff had close, personal relationships with many of Defendants' Senior Executives.

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- 26. Consistently, year in and year out of the parties' relationship, Plaintiff outperformed all projections and milestones set by Defendants - without exception.
- 27. Up through 2005, Defendents represented that they would take all necessary steps to protect Plaintiff's interests in the organization and that they would continue to reward him with compensation increases, bonuses, and additional vacation time (which had grown to more than six (6) weeks of personal time off). Defendants made it clear that Plaintiff would "always" be running the show in the West Coast and that his continued success was one of the primary reasons that Defendants were enjoying such success. In view of their long-standing and very close professional and personal relationship, Plaintiff relied upon Defendants to take appropriate action to protect Plaintiff's interests within the organization and follow through with their long term employment commitments.
- 28. Notwithstanding Defendants committed to Plaintiff that he had permanent and long term employment within Plaintiff's organization, unbeknownst to Plaintiff, Defendants' Robert Minster ("Minster"), the newly minted Senior Vice President and Chief of Underwriting, had ulterior motives. Minster began complaining to Plaintiff regarding Archie Stahr, Sr. Vice President of Operations - conduct which Plaintiff considered to be unprofessional and inappropriate. Minster made it clear to Plaintiff that it was either "his way or the highway." This was completely contrary to what Plaintiff had experienced during his tenure with Defendants, and entirely inconsistent with Defendants' representations that Plaintiff was part of the fabric of the organization and an indispensable member. Plaintiff communicated his concerns to Mr. Stahr and Defendants Human Resources Department. The HR Department agreed to take Plaintiff's concerns seriously and investigate same.
- 29. In December 2005, Plaintiff again confidentially and discreetly approached the HR Department and Ben Sampedro to report his concern regarding the unprofessional and intimidating conduct of Minster. Specifically, Ms. Sampedro was notified that Minster was speaking to

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Plaintiff in a patronizing, condescending, and belittling manner and tone, and that Minster was
creating a negative culture within the organization by pitting underwriting against the claims
department. Ms. Sampedro documented Plaintiff's concerns and advised that the HR Department
would investigate same, but to give Minster "a chance since he was new on the job and had little
experience managing people."

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- In February 2006, Plaintiff received a derogatory, aggressive, and mean spirited 30. written communication from Minster regarding what should have been a benign and harmless issue - the transmittal of "quarterly reports." Minster was critical, demeaning, and unprofessional in his communication. Once again, Plaintiff went to what he understood to be the safe haven of the Defendants' organization - the HR Department and Ms. Sampedro - and reported the conduct. Ms. Sampedro engaged Plaintiff in lengthy discussions at this time, and acknowledged that Minster's conduct was unprofessional and that Minster needed to develop interpersonal skills. The HR Department agreed to counsel Minster but also treat Plaintiff's complaints with great confidentiality and discretion.
- Thereafter, in late February 2006, Minster and Ms. Sampredo walked into 31. Plaintiff's office unannounced and summarily fired Plaintiff - demanding that he immediately leave the premises. Defendants humiliated Plaintiff and refused to allow him to gather his personal belongings and, notably, Minster stated that they could "fire" Plaintiff at will and without any cause. Indeed, Minster stated that he could fire Plaintiff for whatever reason and whenever he wanted.

#### FIRST CAUSE OF ACTION

#### (Breach of Contract-Against All Defendants)

- 32. Plaintiff incorporates by reference paragraphs 1 through 31 as though fully set forth herein.
- 33. Plaintiff and Defendants entered into various written and oral agreements in connection with Plaintiff's employment relationship with Defendants during the years of 2002, 2003, 2004, and 2005 all of which are Plaintiff's possession, custody, and control.

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	34.	Pursuant to the terms and conditions of the parties' written and oral agreement
Plaint	iff was	to manage, develop, and grow Defendants' West Coast Branch Office and, in
excha	inge for	Plaintiff's considerable efforts and resourcefulness, Defendants would provide
Plain	tiff with	continuous, uninterrupted, and long term employment. Plaintiff performed all
condi	tions re	quired of him under the various agreements.

- 35. Defendants materially breached numerous provisions of each of these agreements when, in late February 2006, Defendants summarily terminated Plaintiff without notice, without cause, and/or any suggestion of concern whatsoever.
- 36. As a proximate cause of Defendants' material breaches of such agreements,

  Plaintiff has been damaged in an amount to be proven at trial, but in excess of the jurisdictional limits of this Court.

#### SECOND CAUSE OF ACTION

#### (Fraud-Against All Defendants)

- 37. Plaintiff incorporates by reference paragraphs 1 through 36 as though fully set forth herein.
- 38. As discussed above, Defendants fraudulently induced Plaintiff to resign from XL Surety and joint Defendants' Organization. Defendants, and each of them, knew that Plaintiff would rely upon them and resign from his position to XL Surety, forego other job opportunities, and greatly contribute Plaintiff's time, energy, resources, and account relationships to grow Defendants' West Coast operations. Defendants represented to Plaintiff in 2001 and each year thereafter until Plaintiff was terminated in 2006 that Plaintiff's employment was permanent, long term, and otherwise intimately tied to Defendants' operations and successful long term business strategy. At the time Defendants made these representations and promises, they had no intention of performing them. Plaintiff was ignorant of the falsity of the representations and each of them and believed them to be true.
- 39. Plaintiff relied upon these representations and resigned from his job, enabled Defendants to open, develop, and grow a very successful and profitable West Coast Branch Office, forewent other lucrative opportunities, took the Regional Manager position within Defendants'

organization, and then continued to work for Defendants up through and including late February
2006. As the direct result of Defendants' false representations, Plaintiff has suffered general and
special damages in an amount to be proven at trial

40. The aforementioned conduct of Defendants constitutes intentional misrepresentation, deceit, or concealment of a material facts known to Defendants with the intention on their part of thereby depriving Plaintiff of his property, assets or legal rights or otherwise causing injury, and was despicable conduct that subjected Plaintiff to cruel and unjust hardship in conscious disregard of its rights, so as to justify an award of exemplary and punitive damages.

#### THIRD CAUSE OF ACTION

#### (Wrongful Termination in Violation of Public Policy —Against All Defendants)

- 41. Plaintiff incorporates by reference paragraphs 1 through 40 as though fully set forth herein.
- 42. As described herein, Defendants summarily and wrongfully terminated Plaintiff's employment,
- 43. Defendants unannounced decision was based upon retaliatory reasons because Plaintiff communicated his complaints to Defendants' HR Department and, among other reasons, because of Plaintiff's age.
- 44. It is against fundamental California Public Policy to discriminate against an employee because of age and for retaliatory reasons.
- 45. Defendants actions were in violation of California Labor Code, as well as the California Business & Professions Code.
- 46. As a direct and proximate result of Defendants' actions, Plaintiff has been damaged in an amount to be proven at the time of trial, but in excess of the jurisdictional limits of this Court.
- 47. The aforementioned acts by Defendants were willful, fraudulent, oppressive and malicious.

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48. Plaintiff is entitled to punitive or exemplary damages sufficient to serve as an example and punish Defendants.

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#### FOURTH CAUSE OF ACTION

#### (Violation of Labor Code Section 970 et seq., — Against All Defendants)

- Plaintiff incorporate paragraphs 1 through 48 as though set forth in full herein. Defendants and each of them made the representations enumerated herein. Such representations were knowingly false at the time they were made and concerned the kind, character, and/or existence of work and length of time of such work would last and the compensation therefore. At the times Defendants made these promises, they had not intention of performing them. Plaintiff was ignorant of the falsity of the representations and each of them and believed them to be true. Plaintiff resigned from his position at XL Surety and immediately opened, developed, and significantly grew Defendants' operations. As the result of these false representations, Plaintiff has suffered general and special damages in amount to be proven at trial.
- 50. These misrepresentations constitute violations of Labor Code Section 970, which states a specific public policy, the violation of which is a criminal offense (Section 971) entitled Plaintiff to double damages (Section 972).
- 51. The aforementioned acts by Defendants were willful, fraudulent, oppressive and malicious. Plaintiff is therefore entitled to punitive or exemplary damages sufficient to serve as an example and punish Defendants.

#### FIFTH CAUSE OF ACTION

#### (Breach of the Covenant of Good Faith and Fair Dealing-Against All Defendants)

- 52. Plaintiffs incorporate paragraphs 1 through 51 as though set forth in full herein.
- 53. Plaintiff and Defendants entered into an agreement in 2001, and each year thereafter until Plaintiff's termination in 2006, regarding the terms of Plaintiff's employment and

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his compensation therefore. This agreement created a special relationship between Plaintiff and
Defendants in that Plaintiff left his former position to open and manage a Branch Office for
Defendants. Plaintiff relied upon Defendants unconditional supporting in starting up the new
Branch Office and a long term commitment of employment to replace the substantial business
opportunities that he forewent and to cause Plaintiff to transfer his account and agency
relationships. Plaintiff fully performed all of his obligations.

- 54. Defendants failed to perform and breached their duty to Plaintiff by, among other things, undermining Plaintiff's authority, interfering with Plaintiff's leadership role, and failing to follow through with their long-term employment commitments. This bad faith breach was a violation of the covenant of good faith and fair dealing in that Defendants were in a superior position and because Plaintiff was especially vulnerable given the representations made by Defendants.
- As a direct and proximate result of Defendants' breaches of their duty of good faith 55. · and fair dealing. Plaintiff has been damaged in an amount to be proven at the time of trial but in excess of the jurisdictional limits of this Court.
- The aforementioned acts by Defendants were willful, fraudulent, oppressive and 56. malicious. Plaintiff is therefore entitled to punitive or exemplary damages sufficient to serve as an example and punish Defendants.

#### SIXTH CAUSE OF ACTION

#### (Negligent Misrepresentation — Against All Defendants)

- Plaintiffs incorporate paragraphs 1 through 58 as though set forth in full herein. 57.
- 58. As discussed above, Defendants induced Plaintiff to resign from XL Surety and joint Defendants' Organization. Defendants, and each of them, knew that Plaintiff would rely upon them and resign from his position to XL Surety, forego other job opportunities, and greatly contribute Plaintiff's time, energy, resources, and account relationships to grow Defendants' West Coast operations. Defendants represented to Plaintiff in 2001 and each year thereafter until Plaintiff was terminated in 2006 that Plaintiff's employment was permanent, long term, and otherwise intimately tied to Defendants' operations and successful long term business strategy. At

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the time Defendants made these representations and promises, they had no intention of performing them. Such representations were negligently and/or recklessly made. Plaintiff was ignorant of the falsity of the representations, resigned from his XL Surety position, and joined Defendants' organization, grew the Branch Office, and then was summarily terminated. As the result of such false representations. Plaintiff has suffered general and special damages in an amount to be proven in trial.

Filed 06/17/2008

#### SEVENTH CAUSE OF ACTION

(Age Discrimination — Against All Defendants)

- 59. Plaintiffs incorporate paragraphs 1 through 58 as though set forth in full herein.
- 60. Plaintiff was at all times material hereto an employee covered by California Government Code section 12940 prohibiting discrimination in employment on the basis of age.
- 61. Defendants were at all times material hereto an employer within the meaning of the California Government Code and, as such, barred from discriminating in employment decisions on the basis of age as set forth in California Government Code section 12940 et sea.
  - 62. At all times herein relevant, Plaintiff was over 40 years of age.
- 63. Defendants wrongfully terminated plaintiff's employment, salary, and benefits in later February 2006. These adverse employment actions were motivated, in principal part, by his age. Defendants have a pattern and practice of discriminating against older employees. Moreover, their alleged non-discrimination policies have a dispurate impact on age protected workers.
- 64. Plaintiff filed a timely charge of harassment with the California Department of Fair Employment and Housing ("DFEH") and received a Right to Sue Letter. Therefore, plaintiff has exhausted all of his administrative remedies.
- 65. As a proximate result of defendants' discrimination against plaintiff, plaintiff has suffered and continues to suffer substantial losses in earning, and other

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employment and retirement benefits and has suffered and continues to suffer embarrassment, humiliation and mental anguish all to his damage in an amount according to proof.

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- 66. Defendants committed the acts alleged maliciously, fraudulently and oppressively with the wrongful intention of injuring plaintiff from an improper and evil motive amounting to despicable conduct, and in conscious disregard of plaintiff's rights. Plaintiff is thus entitled to recover punitive damages from defendants in an amount according to proof.
- 67, As a results of defendant's discriminatory acts as alleged herein, plaintiff is entitled to reasonable attorney's fees and costs of said suit as provided by California Government Code section 12965, subsection (b).

#### EIGHTH CAUSE OF ACTION

#### (Defamation — Against All Defendants)

- 68. Plaintiffs incorporate paragraphs 1 through 67 as though set forth in full herein.
- 69. Defendants fabricated charges of misconduct in with underwriting practices and in an attempt to defame the Plaintiff and create a pretextual justification for the termination of Plaintiff's employment.
- 70. First, Defendants made a false allegations that Plaintiff was underwriting accounts with poor credit risks simply to increase the premium dollars of the Branch Office.
- 71. Secondly, Defendants made false accusation that Plaintiff was manipulating account histories to increase his book of business for the Branch Office.
- 72. These defamatory statements made in conjunction with these events were false and imprivileged at the time they were made. In making and communicating these false accusations about Plaintiff, Defendants acted with actual malice.

73.	These defamatory statements were published to others than the plaintiff
including, but	not limited to other underwriters, employees, and potential and existing
accounts.	

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- 74. They injured the Plaintiff's reputation and ability to earn a living in his occupation.
- 75. As a proximate result of Defendants' defamation of Plaintiff, Plaintiff has suffered and continues to suffer substantial losses in earning, and other employment and retirement benefits and has suffered and continues to suffer embarrassment, humiliation and mental anguish all to her damage in an amount according to proof.
- Defendants committed the acts alleged herein maliciously, fraudulently and 76. oppressively, with the wrongful intention of injuring plaintiff, from an improper and evil motive amounting to despicable conduct, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to recover punitive damages from defendants in an amount accordint to proof.

#### NINTH CAUSE OF ACTION

#### (Intentional Infliction of Emotional Distress - Against All Defendants)

- 77. Plaintiffs incorporate paragraphs 1 through 76 as though set forth in full herein.
- In doing the things alleged herein above, Defendants did so intending to 78. cause Plaintiff severe emotional distress and with full knowledge that their actions would indeed cause Plaintiff to so suffer.
- As a direct and proximate result of said defendants' conduct, Plaintiff has in fact suffered significant emotional distress which has harmed him in his feelings, mind and body.
- 80. As a direct and proximate result of said defendants conduct Plaintiff has suffered economic and non-economic damages as alleged herein above.

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· 1、从一次的集中或其中 81. In doing the things herein alleges, defendants acted with malice, fraud or 1 oppression entitling Plaintiff to punitive damages according to proof. 2 3 TENTH CAUSE OF ACTION (Age Discrimination — Against All Defendants) 4 82. Plaintiffs incorporate paragraphs 1 through 81 as though set forth in full herein. 5 83. б Plaintiff is informed and believes and thereon alleges, that if the actions of Defendants are found to be other than intentional, then they were negligently done entitling 7 8 Plaintiff to economic damages as provided by law. 9 WHEREFORE, Plaintiff prays for judgment against Defendant International Fidelity 10 Insurance Company, and each of them, as follows: 11 12 1. For compensatory damages in amount in excess of the jurisdictional limits of this Court; 13 14 2. For exemplary and punitive damages in an amount to be determined at trial, and double damages pursuant to Labor Code Section 970, et seq; 15 3. For attorneys' fees and costs reasonably incurred; 16 For cost of suit: 17 For interest thereon; and 18 19 For such other and further relief as the Court deems just and proper, including equitable relief. 20 JURY DEMA 21 Plaintiff demands a trial by jury. 22 23 Dated: February 13, 2008 24 Charles R. Gossage Attorneys for Plaintiff 25 26

THE LAND COURT MARTINEZ COUNTY OF CONTRA COSTA MARTINEZ, CA, 94553

CHAMBERS VS INTERNATIONAL FIDELITY INSURANCE

NOTICE OF CASE MANAGEMENT CONFERENCE

CIVMSC08-00361

NOTICE: THE CASE MANAGEMENT CONFERENCE HAS BEEN SCHEDULED FOR:

DATE: 07/01/08

DEPT: 02

TIME: 8:30

THIS FORM, A COPY OF THE NOTICE TO PLAINTIFFS, THE ADR INFORMATION SHEET, A BLANK CASE MANAGEMENT CONFERENCE QUESTIONNAIRE, AND A BLANK STIPULATION FORM ARE TO BE SERVED ON OPPOSING PARTIES. ALL PARTIES SERVED WITH SUMMONS AND COMPLAINT/CROSS-COMPLAINT OR THEIR ATTORNEY OF RECORD MUST APPEAR.

- 2. You may stipulate to an earlier Case Management Conference. all parties agree to an early Case Management Conference, please contact the Court Clerk's Office at (925)957-5794 for Unlimited Civil cases and (925)957-5791 for Limited Civil cases for assignment of an earlier date.
- You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference and to discuss the suitability of this case for the EASE Program, private mediation, binding or non-binding arbitration, and/or use of a Special Master.
- At any Case Management Conference the court may make pretrial orders including the following:
  - an order establishing a discovery schedule
  - b.
  - c.
  - d.
  - an order referring the case to arbitration
    an order transferring the case to limited jurisdiction
    an order dismissing fictitious defendants
    an order scheduling exchange of expert witness information e.
  - f.

  - an order setting subsequent conference and the trial date an order consolidating cases an order severing trial of cross-complaints or bifurcating issues
  - an order determining when demurrers and motions will be filed

#### SANCTIONS

If you do not file the Case Management Conference Questionnaire or attend the Case Management Conference or participate effectively in the Conference, the court may impose sanctions (including dismissal of the case and payment of money).

Clerk of the Superior Court of Contra Costa County I declare under penalty of perjury that I am not a party to this action, and that I delivered or mailed a copy of this notice to the person representing the plaintiff/cross-complainant.

Dated: 02/13/08

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With the second 1.00 Mr. Walland 工程的特殊 经经济的复数 相似的概要性的法 15 6 15 Sec. 20 CM-010 ATTORNEY OF PARTY WITHOUT MORNEY COLOR SIMPLE STATE STATE OF THE STATE 31441 Sonia Margarita Parkway, Suite A260 Rancho Sunta Margarita, California 92688 TELEPHONF NO 949.709.0006 FAX NO 949.709,2838 FEB 13 200A ATTORNEY FOR (Margin) Plaintiff Kevin E. Chambers SUPERIOR COURT OF CALIFORNIA, COUNTY OF CONTRA COSTA E TORRE CLERK OF THE COURT
COUNTY OF CONTRA COSTA
COUNTY OF CONTRA COSTA STREET ADDRESS: 640 Ygnacio Valley Road HAILING ADDRESS CITY MIO ZP CODE Walnut Creek, California 94596 BRANCH NAME Walnut Creek CASE NAME D. WEBER CABE COMBER 08-00361 CIVIL CASE COVER SHEET Complex Case Designation Unlimited Limited Loinder Counter (Amount (Amount JUDGE demanded is demanded Filed with first appearance by defendant exceeds \$25.000) \$25,000 or less) (Cal. Rules of Court, rule 3.402) DEPT (tems 1-6 below must be completed (see instructions on page 2). Check one box below for the case type that best describes this case: Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) Auto Tort Contract Auto (22) Breach of contract/warranty (06) Uninsured motorist (48) Antikust/Trade regulation (03) Rule 3,740 collections (09) Other PVPD/WD (Personal Injury/Property Other callections (09) Construction defect (10) Damage/Wrongful Death) Tort Insurance coverage (18) Mass tort (40) Asbestos (04) Other contract (37) Securities Migation (28) Product liability (24) Real Property Environmental/Toxic tort (30) Medical malpractice (45) Eminent domain/inverse insurance coverage claims arising from the above listed provisionally complex case condemnation (14) Other PI/PD/WO (23) types (41) . Wrongful eviction (33) Non-PI/PD/WD (Other) Tort Other real property (26) Enforcement of Judgment Business tortunials business practice (07). Enforcement of pudgment (20) Civil rights (08) Unlawful Datainer Commercial (31) Defemation (13) Miscellaneous Civil Complaint Residential (32) Fraud (16) RICO (27) Intellectual property (19) Drugs (38) Other complaint (not specified above) (42) Professional negligence (25) Judicial Review ellaneous Civil Petition Asset forfeiture (05) Other non-PI/PD/WD (01) (35) Partnership and corporate governance (21) Pelilion re: arbitration award (11) Employment Other patition (not specified above) (43) Wrongful termination (38) Writ of mandate (02) Other employment (15) Other judicial review (39) This case \_\_\_is is not . complex under rule 3,400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management: Large number of separately represented parties Large number of witnesses Extensive motion practice raising difficult or novel Coordination with related actions pending in one or more courts issues that will be time-consuming to resolve In other counties, states, or countries, or in a federal court Substantial amount of documentary evidence Substantial postjudgment judicial supervision Remedies sought (check all that apply). a 📝 monetary b. nonmonetary; declaratory or injunctive relief c. upunitive Number of causes of action (specify): Ten This case is I is not a class action suit. If there are any known related cases, file and serve a notice of related case. (You final use form CM-015.) Date: February 12, 2008 Charles R. Gossage, Esquire TYPE OR PRINT NAME (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY) NOTICE Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and institutions Code). (Cal, Rules of Court, rule 3.220.) Fallure to file may result File this cover sheet in addition to any cover sheet required by local court rule. . If this case is complex under rule 3.400 at seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding. . Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

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ATTORNET OF PARTY WITFOUT ATTORNET OF PARTY WITFOUT ATTORNEY (SBN 166260) 31441 Santa Margarita Parkway, Suite A26 Rancho Santa Margarita, California 92688	Commission of the second of th	FOOTS LED
TREEPHONE NO 949.709.0006 AYLORNEY FOR INSTRUMENT PIRILITIFIT KEVIN E. Ch.	FAX NO 949.709,2838 ambers	FEB 13 700A
SUPERIOR COURT OF CALIFORNIA, COUNTY OF CO		COUNTY OF COUNTS COUNTY SUPERED COUNTY OF COUNTS OF CALFORDA
CITY AND ZIP CODE Walnut Creek, Califo	mia 94596	By
CASE NAME Waltitul Creek		D. WEBER
CIVIL CASE COVER SHEET  Untimited Limited (Amount (Amount demanded demanded is	Complex Gase Designation  Counter Joinder  Filed with first appearance by defen	
exceeds \$25,000) \$25,000 or less)  Items 1-6 be	(Cal. Rules of Court, rule 3.402 ow must be completed (see instructions	
Check one box below for the case type the	the treatment of contract/warranty (06)	Provisionally Complex Civil Litigation (Cat. Rules of Court, rules 3.400–3.403)
Auto (22) Uninsured motorist (48). Other PVPD/WD (Personal Injury/Property Damage/Wrongful Doath) Tort Asbestos (04)	Rule 3,740 pollections (09)  Other collections (09)  insurance coverage (18)  Other contract (37)	Antitrust/Trade regulation (63)  Construction defect (10)  Mace tort (40)  Securities hitigation (28)
Product liability (24)  Medical malpractice (45)  Other PI/PD/WD (23)  Non-PI/PD/WD (Diner) Tort	Real Property  Eminent domain/inverse condemnation (14)  Wrongful eviction (33)  Other real property (25)	Environmenta/Toxic tort (30) Insurance coverage claims arising from the above listed provisionally complex case types (41)  Enforcement of Judgment
Business toriunfair business practice (0)  Cwil rights (08)  Defamation (13)	Unlawful Detainer Commercial (31)	Enforcement of judgment (20) Miscellaneous Civil Complaint
Fraud (16) Intellectual property (19) Professional negligence (25)	Residential (32) Drugs (38) Judicial Review	RICO (27)  Other complaint (not specified above) (42)
Other non-PIPD/WD tort (35) Employment  Wrongful termination (38)	Asset forfeiture (05) Pelition re: arbitration award (11) Writ of mandate (02)	Miscollaneous Civil Petition Partnership and corporate governance (21) Other petition (not specified above) (43)
		tules of Court. If the case is complex, mark the
tactors requiring exceptional judicial mans a Large number of separately repribe. Extensive motion practice raising issues that will be time-consumit c. Substantial amount of document	esented parties d. Large numb difficult or novel e. Coordination g to resolve in other cou	er of witnesses  with related actions pending in one or more courts  miles, states, or countries, or in a federal court  postjudgment judicial supervision
3 Remedies sought (check all that apply). 4. Number of causes of action (specify): T 5 This case is is not a cket	monetary b. nonmonetary: en ess action suit.	declaratory or injunctive relief c. punitive
<ol> <li>If there are any known related cases, file</li> <li>Date: February 12, 2008</li> </ol>	and serve a notice of related case. You	yhdy use form CM-015.)
Charles R. Gossage, Esquire	NOTICE	ISIONARIO FOR PURTY OR ATTORNEY FOR PARTY)
under the Probate Code, Family Code, or in sanctions.  • File this cover sheet in addition to any co • If this case is complex under rule 3,400 s	first paper filed in the action or proceed welfare and institutions Code). (Cal. R wer sheet required by local court rule. it seq. of the California Rules of Court, ye	ing (except small claims cases or cases filed ules of Court, rule 3.220.) Failure to file may result ou must serve a copy of this cover sheet on all neet will be used for statistical purposes only.
- Unless into its a collections case under ru	CIVIL CASE COVER SHEET	Cal Russ of Court ruse 2 36, 3 20, 3 400-0,403 1,140

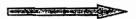
# Superior Court of California, County of Contra Costa

#### NOTICE TO DEFENDANTS

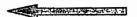
In Unlimited Jurisdiction Civil Actions

#### YOU ARE BEING SUED. The packet you have been served should contain:

- The Summons
- b. The Complaint
- C. The Notice of Case Management (shows hearing date and time)
- Blank: Case Management Statement (Judicial Council Form CM-110) d.
- Blank: Stipulation and Order to Attend ADR and Delay First Case Management Conference 8. 90 Days (Local Court Form CV-655b)
- f. Alternative Dispute Resolution (ADR) Information (Local Court Form CV-655c)



#### WHAT DO I DO NOW?



#### You must:

- Prepare your response YOU COULD LOSE YOUR CASE—even before it is heard by a judge or before you can defend yourself, if you do not prepare and file a response on time. See the other side of this page for types of responses you can prepare.
- 2. Complete the Case Management Statement (CM-110)
- Once your court forms are complete, you 3. File and serve your court papers on time must file 1 original and 2 copies of the forms at court. An adult who is NOT involved in your case must serve one set of forms on the Plaintiff. If you were served in person you must file your response in 30 days. If the server left a copy of the papers with an adult living at your home or an adult in charge at your work or you received a copy by mail you must file your response in 40 days.
- 4. Prove you served your court papers on time by having your server complete a Proof of Service, (Judicial Council form POS-040), that must be filed at the court within 60 days.
- 5. Go to court on the date and time given in the Notice of Case Management Conference.
- 6. Consider trying to settle your case before trial If you and the other party to the case can agree to use mediation, arbitration or neutral case evaluation, the Stipulation and Order to Attend ADR and Delay First Case Management Conference 90 Days can be filed with your other papers. For more information read the enclosed ADR information, visit www.cc-courts.org/adr, or call (925) 957-5787.

iMPORTANT! The court recommends consulting an attorney for all or part of your case. While you may represent yourself, lawsuits can be complicated, and the court cannot give you legal advice.

COURT FEES: You must pay court fees the first time you file your papers. If you also file a motion, you must pay another fee. If you cannot afford the fees, you may ask the court to waive (allow you not to pay) fees. Use Judicial Council forms FW-001-INFO [information sheet]; FW-001 [application]; and FW-003 [order].

COURT FORMS: Buy forms at the Forms Window in the Family Law Building or download them for free at www.courtinfo.ca.gov/forms/

# SUPERIL & COURTOF THE STATE OF CALL JRNA

vs.	Plaintiff(s)		
Case No.: Date comp	Defendant(s)	Stipulation and Order to Attend First Case Management Conference se	ence 90 Days
AT LEAST 15 DAYS BEFORE THE	FIRST CASE MAI	IIS STIPULATION, WITH CASE MANAGEMEN NAGEMENT CONFERENCE M WITH THE JUDGE'S SIGNATURE TO THE A	
FAX: (925) 957-5689 or MAIL: P.O.  THIS STIPULATION MAY NOT BE			
		d conferred on the subjects set forth in F ve dispute resolution (ADR) process: [ch arbitration	eck ⊠onej:
<ol> <li>This is not a complex civil case</li> <li>All parties have been served ar</li> <li>All parties have agreed to a speed</li> <li>Defendant(s)' first appearance</li> <li>Copies of this Stipulation and secopies to counsel and the partie</li> </ol>	(as described in ad intend to sub- ecific plan for suf- fee has been pa elf-addressed st es;	ADR WITHIN 90 DAYS, AND CERTIFY: California Rules of Court, Rule 3.400); nit to the jurisdiction of the court; fficient discovery to make the ADR process id or will be submitted with this Stipulation; amped envelopes are provided for returning	
<ol> <li>Case Management Conference</li> <li>All parties will attend ADR confe</li> <li>All parties know the court will n</li> </ol>	erences as requ	ired by local court rule (Appendix C); and,	
Counsel for Plaintliff (print)	Fax	Counsel for Defendant (print)	Fax
Signature		Signature	1
Counsel for Plaintiff (print)	Fax	Counsel for Defendant (print)	Fax
Signature		Signature	
Pursuant to the Stipulation of the partic the Case Management Conference se (8:30 a.m. /) Plaintiff's	es, and subject to t for counsel must ne	the Case Management Order to be filed, IT IS So is vacated and rescheduled for otify all parties of the case management confi	O ORDERED thatatat
Dated:		Judge of the Superior Co	ourt

e e Maharen en siden	নার । তেওঁ বা হা তেওঁ প্রকাশ প্রকাশ কর্মক ক্ষাত্র করা ক্ষাত্র করা করা করা করা করা করা করা করা করা কর		the first register in the color of the color
ATTORNEY OR PARTY WITHOUT address;	ATTORINEY (Name, State Bar number, and		FOR COURT USE ONLY
TELEPHONE NO.:  E-MAIL ADDRESS (Optional):  ATTORNEY FOR (Name):	FAX NO. (Optionet):		
STREET ADDRESS: MAILING ADDRESS:	CALIFORNIA, COUNTY OF		
BRANCH NAME:  PLAINTIFF/PETITION	TER:		
DEFENDANT/RESPONDE	ENT:		
(Check one):	CASE MANAGEMENT STATEMENT UNLIMITED CASE (Amount demanded (Amount deman		CASE NUMBER:
,	exceeds \$25,000) or less)	200 10 \$20,000	
Party or parties (a     This sta	ONS: All applicable boxes must be checked, a nswer one): tement is submitted by party (name): tement is submitted jointly by parties (names):	nd the specified	information must be provided.
a. The complaint	oss-complaint (to be answered by plaintiffs and co was filed on (date): ss-complaint, if any, was filed on (date):	ross-complainant	s only)
a. All part	wered by plaintiffs and cross-complainants only) es named in the complaint and cross-complaint ha owing parties named in the complaint or cross-cor have not been served (specify names and ex	nplaint	or have appeared, or have been dismissed.
(2)	have been served but have not appeared an		dismissed (specify names):
	have had a default entered against them (sp owing additional parties may be added (specify na ay be served):		volvement in case, and the date by which
Description of case     Type of case		(describe, in	cluding causes of action):
			Page 1 of 4



## CONTRA COSTA COUNTY SUPERIOR COURT ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

All judges in the Civil Trial Delay Reduction Program agree that parties should consider using Alternative Dispute Resolution (ADR) to settle their cases. To tell the court you will use ADR:

- Choose ADR on the Case Management Form (CM-110);
- File a Stipulation and Order to Attend ADR and Continue First Case Management Conference 90-Days (local court form); or
- Agree to ADR at your first court appearance.

Questions? Call (925) 957-5787, or go to www.cc-courts.org/adr

#### **MEDIATION**

Mediation is often faster and less expensive than going to trial. Mediators help people who have a dispute talk about ways they can settle their case. Parties call or visit the ADR Programs office to get a list of mediators. After parties have agreed on a mediator, they must write a summary (5 pages or less) explaining the facts, legal arguments, and legal authority for their position. They must send this summary to the other parties and the mediator at least 5 court days before mediation starts.

ALL parties and attorneys must go to mediation. Mediation can be held whenever and wherever the parties and the mediator want, as long as they finish before the court deadline. In some kinds of court cases, parties have the chance to mediate in the courthouse on their trial day.

Most mediators begin by talking with the parties together, helping them focus on the important issues. The mediator may also meet with each party alone. Mediators often ask parties for their ideas about how to settle the case. Some mediators tell the parties how much money they think a case is worth, or tell them what they think might happen if the case went to trial. Other mediators help the parties decide these things for themselves. No matter what approach a mediator takes, decisions about settling a case can only be made when all the parties agree.

If the parties go through the court ADR program, mediators do not charge fees for the first half hour spent scheduling or preparing for mediation. They also do not charge fees for the first two hours of mediation. If parties need more time, they must pay that person's regular fees. Some mediators ask for a deposit before mediation starts. Mediators who do this must give back whatever is left after counting the time he or she spent preparing for or doing the mediation. A party whose court fees have been waived (cancelled) may ask if their mediation fees or deposit can be waived.

If parties agree about how they will settle their case, they can choose to keep it private, write it up as a contract, or ask the judge to make it a court order. What parties say and agree to in mediation is confidential (private).

#### PRIVATE MEDIATION

Private mediation works in the same way as judicial mediation, but the parties do not go through the ADR Programs office. Parties choose a mediator on their own, and pay the mediator's normal fees.



#### TEMPORARY JUDGE

Le Maria Caralla Caral

Some parties want a trial, but want to choose who will decide the case and when the trial will take place. Parties can agree on an attorney that they want the court to appoint as a temporary judge for their case. (See Article 6, Section 21 of the State Constitution and Rule 2.830 of the California Rules of Court.) Temporary judges have nearly the same authority as a superior court judge to conduct a trial and make decisions. As long as the parties meet the court deadline, they can schedule the trial at their own and the temporary judge's convenience.

Each of the temporary judges on the court's panel has agreed to serve at no charge for up to 5 court days. If the parties need more time, they must pay that person's regular fees. All parties and their lawyers must attend the trial, and provide a copy of all briefs or other court documents to the temporary judge at least two weeks before the trial. These trials are similar to other civil trials, but are usually held outside the court. The temporary judge's decision can be appealed to the superior court. There is no option for a jury trial. The parties must provide their own court reporter.

#### SPECIAL MASTER

A special master is a private lawyer, retired judge, or other expert appointed by the court to help make day-to-day decisions in a court case. The special master's role can vary, but often includes making decisions that help the discovery (information exchange) process go more smoothly. He or she can make decisions about the facts in the case. Special masters can be especially helpful in complex cases. The trial judge defines what the special master can and cannot do in a court order.

Special masters often issue both interim recommendations and a final report to the parties and the court. If a party objects to what the special master decides or reports to the court, that party can ask the judge to review the matter. In general, the parties choose (by stipulation) whom they want the court to appoint as the special master, but there are times (see California Code of Civil Procedure Section 639), when the court may appoint a special master or referee without the parties' agreement. The parties are responsible to pay the special master's regular fees.

#### **COMMUNITY MEDIATION SERVICES**

Mediation Services are available through non-profit community organizations. These low-cost services are provided by trained volunteer mediators. For more information about these programs contact the ADR Program at (925) 957-5787

1 Steven R. Blackburn, State Bar No. 154797 Andrew J. Sommer, State Bar No. 192844 2 EPSTEIN BECKER & GREEN, P.C. 7000 JUN 16 P 1: 35 One California Street, 26th Floor 3 San Francisco, California 94111-5427 Telephone: 415.398.3500 4 Facsimile: 415.398.0955 sblackburn@ebglaw.com J. MYCY/CH, DEPUTY CLERK 5 asommer@ebglaw.com 6 Attorneys for Defendant, INTERNATIONAL FIDELITY INSURANCE 7 **COMPANY** 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 FOR THE COUNTY OF CONTRA COSTA 10 11 KEVIN E. CHAMBERS, CASE NO. C 08-00361 12 13 Plaintiff, DEFENDANT INTERNATIONAL FIDELITY INSURANCE COMPANY'S ANSWER TO PLAINTIFF KEVIN E. 14 ٧. CHAMBERS' COMPLAINT INTERNATIONAL FIDELITY 15 INSURANCE COMPANY, an Entity of Unknown Form; and DOES 1-20 February 13, 2008 Complaint filed: 16 Trial Date: None set Defendants. 17 18 Defendant International Fidelity Insurance Company ("Defendant") hereby responds to 19 Plaintiff Kevin E. Chambers' ("Plaintiff") Complaint as follows: 20 GENERAL DENIAL 21 Defendant generally denies each and every allegation contained in Plaintiff's unverified 22 Complaint, pursuant to Section 431.30(d) of the California Code of Civil Procedure, and submits 23 the following affirmative defenses. 24 25 /// /// 26 27 /// /// 28

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every purported cause of action alleged therein, is barred as Plaintiff may not seek relief from this court in that he comes before this court with unclean hands.

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11. As an eleventh affirmative defense, Defendant avers that Plaintiff is estopped by his own actions from seeking the relief requested in his Complaint.

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# TWELFTH AFFIRMATIVE DEFENSE

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(Laches)

12. As a twelfth affirmative defense, Defendant avers that Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the doctrine of laches.

#### THIRTEENTH AFFIRMATIVE DEFENSE

(Workers' Compensation Preemption)

13. As a thirteenth affirmative defense, Defendant avers that to the extent that Plaintiff seeks damages for workplace injuries or purported workplace injuries, the exclusive remedy for Plaintiff's injuries, if any, is the Workers' Compensation Act of the State of California, Labor Code section 3200, et seq.

#### FOURTEENTH AFFIRMATIVE DEFENSE

(No Punitive Damages – Constitutional Basis)

14. As a fourteenth affirmative defense, Defendant avers that Plaintiff's Complaint violates the rights of Defendant to procedural and substantive due process under the Fifth and Fourteenth Amendments to the United States Constitution and the California Constitution because of, among other things, the vagueness and uncertainty of the criteria for the imposition of punitive damages and the lack of fair notice of what conduct will result in the imposition of such damages. Plaintiff should therefore not be entitled to recover punitive damages.

# FIFTEENTH AFFIRMATIVE DEFENSE

(At-Will Employment)

15. As a fifteenth affirmative defense, Defendant avers that Plaintiff's causes of action for breach of contract and breach of the covenant of good faith and fair dealing are barred because Plaintiff's employment was terminable at-will, pursuant to California Labor section 2922.

# SIXTEENTH AFFIRMATIVE DEFENSE

(Failure of Consideration)

16. As a sixteenth affirmative defense, Defendant avers that Plaintiff's causes of action for breach of contract and breach of the covenant of good faith and fair dealing are barred by a failure of consideration.

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#### SEVENTEENTH AFFIRMATIVE DEFENSE

#### (Covenants Excused)

17. As a seventeenth affirmative defense, Defendant avers that its performance under the agreements alleged in the Complaint is excused through Plaintiff's non-performance, inadequate performance, and/or other breach of a material covenant of the alleged agreements between them.

Defendant reserves its right to assert additional affirmative defenses in the event discovery and/or further factual investigation indicate that additional affirmative defenses are available.

### WHEREFORE, Defendant prays for judgment as follows:

- 1. That a decision be rendered dismissing Plaintiff's Complaint with prejudice;
- 2. That Plaintiff take nothing by reason of his Complaint;
- 3. That Defendant be awarded its costs of suit according to proof;
- 4. That Defendant be awarded its attorneys' fees; and
- 5. For such other and further relief as the Court may deem just and proper.

DATED: June 16, 2008 EPSTEIN BECKER & GREEN, P.C.

By:

Steven R. Blackburn Andrew J. Sommer Attorneys for Defendant

INTERNATIONAL FIDELITY INSURANCE COMPANY

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